SPECIAL MEETING
DESTIN CITY COUNCIL
OCTOBER 21, 2021
ANNEX COUNCIL CHAMBERS
5:30 PM

*****Core Value of the Month - Transparency*****

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

PUBLIC HEARING

A. First reading of Ordinance 21-22-CN - Electric Franchise Agreement with Gulf Power Company

PUBLIC COMMENTS

ADJOURNMENT

****** Any invocation that is offered before the official start of the City Council meeting shall be the voluntary offering of a private person, to and for the benefit of the City Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council, or the City staff, and the City is not allowed by law to endorse the religious beliefs or views of this, or any other speaker. Persons in attendance at the City Council meeting are invited to stand during the opening invocation and Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered. A person may exit the City Council Chambers and return upon completion of the opening invocation if a person does not wish to participate in or witness the opening invocation.***

Persons with disabilities who require assistance to participate in City meetings are requested to notify the City Clerk's Office at (850) 837-4242 in advance. Hearing Impaired: TTY: 711. Assistance also available through Human Resources, Title VI Coordinator, at (850) 837-4242.

Personas con discapacidades que necesitan asistencia o personas que necesiten ayuda con un idioma para participar en las reuniones de la ciudad, deberán notificar la oficina de la Secretaria Municipal al (850) 837-4242 antes de la reunión. Discapacidad auditiva: TTY: 711 (Solicitar Espanol CA). La ayuda tambien está disponible por Recursos Humanos, Coordinador del Título VI, al (850) 837-4242.

ITEM # <u>2021-4301</u>

CITY OF DESTIN

AGENDA ITEM

COUNCIL MEETING DATE: October 21, 2021
TYPE OF AGENDA ITEM: Public Hearing
AGENDA OUTLINE NUMBER: A.

TO: City Council

THRU: Louis Zunguze, Community Development Director
Webb Warren, Deputy City Manager
Krystal Strickland, Finance Director
Kyle Bauman, City Attorney
Lance Johnson, City Manager

FROM: Lance Johnson, City Manager
Jeffrey Cozadd, Grants Manager

DATE: 10/15/2021

SUBJECT: First reading of Ordinance 21-22-CN - Electric Franchise Agreement with Gulf Power Company

---

I. <u>BACKGROUND</u>: Pursuant to the terms of the City's previous franchise agreement (Ordinance No. 048, as amended and extended) with Gulf Power Company ("Gulf"), the City exercised its right to purchase Gulf's electric facilities within the City by Resolution 18-31, on September 13, 2018. Since that time, pursuant to applicable Florida law, the City and Gulf have been operating under the terms of the previous franchise while the City and Gulf have continued negotiating toward a new franchise agreement. Those negotiations have also included parallel negotiations toward the form of an agreement that would be applicable to the first phase of the City's contemplated project to convert the overhead electric, telecommunications, and other utility facilities within the City to underground service (the "Undergrounding Project" or "UG Project"). City Staff and special utility counsel have continued these negotiations, which have led to the proposed new franchise agreement, Ordinance 21-22-CN.

As information, Gulf Power was acquired by NextEra Energy, Inc., on January 1, 2019, and has now, pursuant to federal approvals, become part of Florida Power & Light Company, although the Gulf Power tariffs continue to apply to Gulf service because the Florida Public Service Commission has not yet acted on FPL's and Gulf's pending proposal for rate unification.

II. <u>DISCUSSION</u>: The proposed new franchise agreement includes the following major

provisions:
1.) Franchise fee rate of 6.0 percent, applicable to Gulf's revenues from residential, commercial, and industrial service within the City;
2.) City retains Right to Purchase Gulf's facilities at and after the expiration or termination of the Franchise, and, subject to certain limitations, (a) if the City and Gulf/FPL are not able to agree on and execute an underground facilities conversion agreement in substantially the form of Exhibit 1 to the Franchise within two years following the Effective Date of the Franchise, in which case the City's Right to Purchase vests but must be exercised within 12 months following such vestiture; and (b) upon termination of the Franchise pursuant to other provisions of the Franchise (e.g., resulting from a change in law creating competitive changes, or resulting from a default).
3.) If the City and Gulf/FPL do execute a UG Agreement, then the Franchise lasts for 30 years but the City's Right to Purchase remains at and after the expiration after 30 years.

A. **Link to Strategic Goals / Objectives:** Council Objective 1.4 Underground Utilities, Management Objective 2.3 Funding sources for Undergrounding Utilities

B. **Effect on Budget (EOB):** The past three years, an electric franchise fee of 4% has brought in an average of approximately $1,650,000 per year. Increasing the franchise fee to 6% is anticipated to bring in approximately $2,475,000 per year. The impact on the FY 2022 budget will depend on the effective starting date of the agreement. This agreement covenants that the additional 2% shall be committed for the purpose of financing the conversion of existing overhead utility facilities to underground facilities, and 10% of these proceeds shall be dedicated to landscaping of the underground conversion areas.

C. **Level of Service (LOS):** Gulf/FPL can be expected to continue to provide service that meets all applicable requirements of the National Electrical Safety Code and meets or exceeds basic standards for reliable service.

III. CONCLUSION: Ordinance 21-22-CN provides for a new franchise agreement between the City and Gulf Power. Upon acceptance by Gulf, the new franchise will become effective and will last for 30 years, subject to the City's Right to Purchase at and after the 30-year term, and also subject to the City's Right to Purchase in the event that the City and Gulf/FPL do not enter into an acceptable UG Agreement within two years after the Effective Date of the Franchise.

IV. RECOMMENDED MOTION: I move that Ordinance No. 21-22-CN be approved on first reading.

Attachments:

1. Ordinance 21-22-CN Franchise Agreement
2. Destin Revised UFCA.FINAL Mileage Version.WO WATERMARK.300PM.10-19-2021

ORDINANCE NO. 21-22-CN

AN ORDINANCE GRANTING TO GULF POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF DESTIN, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Destin ("City") finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality and reliable electric service; and

WHEREAS, the City and Gulf Power Company ("Gulf Power") were previously parties to a franchise agreement embodied in the City's Ordinance No. 048, as amended; and

WHEREAS, the City has determined that the public health, safety, and welfare will be promoted and served by converting the existing overhead electric facilities within the City to underground facilities; and

WHEREAS, despite good-faith efforts by both the City of Destin and Gulf Power Company, the parties have not yet reached an agreement on the costs, terms, and conditions for converting the existing overhead electric facilities in the City to underground facilities; and

WHEREAS, the City and Gulf have continued negotiating toward an appropriate and mutually acceptable agreement for the undergrounding of overhead electric facilities in the City and for a new franchise agreement predicated on the achievement of such a mutually acceptable undergrounding agreement; and

WHEREAS, the City of Destin finds it in the public interest to retain control over the use of public rights-of-way by providers of electricity to protect the public health, safety, and welfare, to ensure against interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right-of-way space, and to protect the public investment of right-of-way property; and

WHEREAS, the City of Destin finds that the granting of this franchise is the best means of assuring that the above-described interests of the City are promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA:

Section 1. In consideration of the mutual benefits that will accrue to the City of Destin, sometimes referred to as the Grantor herein or as the "City," and the inhabitants thereof, on the one hand, and to Gulf Power Company, a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee (or "Gulf"), on the other hand, the City of Destin hereby gives and grants to the Grantee the nonexclusive right, authority, privilege, and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate, and conduct in said City of Destin's public rights-of-way a system of electric light and power facilities, including, without limitation, conduits, poles, wires, transformers, meters, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called “Grantee’s Facilities” or "Facilities"), for the purpose of supplying electricity and other electricity-related services incidental thereto to the Grantor and its successors and assigns, to the inhabitants of the City and to business entities operating therein, and to persons and business entities beyond the corporate limits of the Grantor who purchase electric service from Gulf (collectively, all such inhabitants and business entities that purchase electric service from Grantee are sometimes referred to herein as “Customers”). As used in the preceding sentence, the term “other electricity-related services” means Gulf’s facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which do not include any services that are sold separately to any entity. As used herein, the terms “public rights-of-way” and “Grantor’s public rights-of-way” shall mean property or any interest therein that is acquired for or devoted to a public road, including but not limited to, roadways, highways, streets, or bridges for which the City is the authority and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface, and the area below the surface of such places. The rights and privileges granted hereby do not extend to any other public places of any type whatsoever, that are administered by the Grantor but not located in any space within the specific definition of the Grantor’s public rights-of-way set forth hereinabove, or to any similar places. The determination of whether a public place or public space is part of Grantor’s public rights-of-way is within the sole and sound discretion of the Grantor and, except as to whatever statutory rights the Grantee may have to install its facilities in certain road rights-of-way, which may be determined by a court of competent jurisdiction, as necessary, the Grantor's determination may not be challenged in any way in any venue.

As appropriate to the context, each of the City and Gulf may be referred to herein individually as a "Party," and they may be referred to collectively as the "Parties" to this Franchise Agreement. This Ordinance and the mutual agreements created by this Ordinance and the Grantee's acceptance hereof are referred to herein as "the Franchise" or "the Franchise Agreement." The rights and privileges granted hereby are expressly subject to all of the provisions and limitations contained in this Franchise Agreement, including, expressly but without limitation, the Grantor's reserved Right to Purchase established herein and all provisions relating to the Grantor's right and ability to exercise that Right to Purchase as provided in various sections of this Franchise Agreement.

Section 2. The Facilities of the Grantee shall be installed, located or relocated, erected, maintained, and operated in accordance with good engineering practices and so as to not unreasonably interfere with vehicular (including bicycles) and pedestrian traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with vehicular (including bicycles) and pedestrian traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible.

Any and all Facilities of the Grantee shall further be installed, operated, and maintained in compliance with the most current edition of the National Electrical Safety Code and all applicable provisions of the Florida Administrative Code applicable to such facilities. The Grantee’s rights to operate its Facilities are and shall remain subject to all applicable valid rules and regulations of the City of Destin, Okaloosa County, the State of Florida, and the United States, as such rules and regulations may be amended from time to time.

When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from persons other than the Grantor as may be provided by law.

The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this Franchise shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 3. (a) Subject to the Grantor’s Right to Purchase the Grantee’s electric Facilities in the City pursuant to this Section 3 hereof (hereinafter the City’s “Right to Purchase”), the Franchise granted by this Ordinance shall exist and continue for a period of thirty (30) years from the Effective Date of this Ordinance.

(b) As a condition precedent to the effectiveness of this Franchise, Grantor does hereby reserve and the Grantee hereby gives and grants to the said Grantor the irrevocable right, at and after the expiration or termination of this Franchise as set forth in Section 12 herein or upon the occurrence of certain potential events as expressly specified in Section 3(c) herein, to purchase the Grantee's Facilities and other property, including vehicles, equipment, materials, supplies, and real property and real property interests and any improvements and fixtures on such real property, within the Grantor's corporate limits subject to this Franchise used under or in connection with the Franchise hereby granted. The amount to be paid shall include the reproduction cost of the property sought to be acquired, less depreciation, together with the going concern value and severance costs. All closing costs of such purchase shall be borne by Grantor. If the Grantor and Grantee are unable to agree upon the amount to be paid, the amount shall be determined in a declaratory action which may be instituted by either Grantor or Grantee. Each party shall bear its own experts' and attorneys' fees and costs incurred in connection with such declaratory action. For clarity, the Grantee's property and property interests other than its Facilities, as defined above, including all real property, interests in real property, any improvements or fixtures on such real property, vehicles, equipment, materials, and supplies, are also subject to the Grantor's Right to Purchase; for convenience, all such property other than the Facilities are referred to herein as "Related Property."

(c) To promote the public health, safety, and welfare of the inhabitants of the City of Destin and of all persons and entities who live, work, and conduct their business therein, Grantor plans to undertake the conversion of all overhead utility facilities, including the Grantee's electrical distribution facilities, that are presently installed using overhead technologies, within the Grantor's corporate limits to underground facilities. Grantor hereby affirms that it recognizes that, as the conversion of Grantee's overhead facilities to underground facilities is completed and each section or area of underground electrical facilities becomes operational, those facilities will be owned by the Grantee. Both Grantor and Grantee further recognize and affirm that such underground facilities will be part of Grantee's Facilities that the Grantor would acquire pursuant to its Right to Purchase as set forth herein, in the event that the Grantor exercises its Right to Purchase. As of the Effective Date of this Franchise, the Grantor and Grantee have been negotiating and continue to negotiate a definitive agreement, subject to and in accordance with the applicable rules of the Florida Public Service Commission, as to the terms and conditions, including cost allocation and Contributions in Aid of Construction ("CIAC"), for the conversion of the Grantee's overhead electric facilities to underground facilities, and the Grantor and Grantee hereby covenant to continue negotiations toward such definitive agreement in good faith. It is anticipated that the entire conversion project will be achieved in a gradual series of smaller conversion projects, each encompassing a distinct portion of the City. As used in this Franchise, the term "phase" means any one of the smaller conversion projects encompassing a distinct portion of the City. In the event that such negotiations have not resulted in an executed definitive agreement substantially in the form attached as Exhibit 1, Underground Facilities Conversion Agreement, between the Grantor and Grantee for at least one phase of the entire conversion project by the date that is two (2) years after the Effective Date hereof, then the Grantor's Right to Purchase pursuant to this Section 3(c) shall thereupon vest immediately in favor of the Grantor and shall continue in effect and be fully subject to election by the Grantor for a period of twelve (12) months thereafter by written notice to Grantee. Beginning when the Grantor delivers such written notice to Grantee, the Grantor will take material steps to purchase the Grantee's Facilities in accordance with Section 3(b). If Grantor does not elect to exercise its Right to Purchase pursuant to this Section 3(c) within said twelve (12) month period, the Grantor's Right to Purchase shall expire. For clarity, if the Grantor does not elect to exercise its Right to Purchase pursuant to this Section 3(c) by the date that is three (3) years after the Effective Date of this Franchise, then the Grantor's Right to Purchase pursuant to this Section 3(c) shall expire, but such expiration shall in no way impact Grantor's rights under Section 12 of this Franchise.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law. The Grantee recognizes its obligation to provide electric energy and power service within the City on reasonable terms and conditions at fair, just, reasonable, and nondiscriminatory rates to all who request said service during the term of this Franchise and thereafter, as required by law or by a duly constituted public regulatory body.

Section 5. As a further consideration for the granting of the rights, privileges, and franchises hereby granted, the Grantee, its successors and assigns, shall pay to the Grantor, commencing sixty (60) days after the Effective Date hereof, within thirty (30) days after the first day of each month thereafter for the remainder of the term of this Franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations during the Grantee's monthly billing period ending 30 days prior to each such payment will equal six (6%) percent of the Grantee's billed revenues, less actual write-offs, exclusively from the sale of electrical energy to customers served under Grantee's residential, commercial, and industrial rate schedules (as such customers and rate schedules are defined by Gulf Power's Tariff for Retail Electric Service) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event (subject only to the "Favored Nations" provisions in Section 7) shall payment for the rights and privileges granted herein exceed six percent (6%) of such revenue for any monthly billing period of the Grantee.

The City expressly covenants that it will dedicate any amounts received as franchise consideration that are over and above four (4) percent of Grantee's revenue from the furnishing of electric service to Customers served under Grantee's residential, commercial, and industrial rate schedules within the City to be used solely for the purpose of financing the conversion of existing overhead utility facilities to underground facilities; provided that a minimum of ten (10) percent of all such revenues dedicated to the conversion of utility facilities to underground facilities shall be set aside and used exclusively for landscaping of the underground conversion areas, where such landscaping shall specifically include planting, to the maximum extent possible, in the opinion of a certified arborist, native tree species including Southern magnolia and live oak trees. Any such landscaping must comply with Grantee's vegetation policies to the extent applicable.

The Grantor understands and agrees that such revenues as described in this paragraph are limited to the precise revenues described therein.

The Parties expressly agree that the above-stated franchise fee provisions have been freely bargained for and represent fair and just compensation relative to the fair rental value of the rights-of-way and the other consideration given by the City to Gulf pursuant to this Franchise, including the fact that, as recognized by the City and Gulf, the electric facilities thus converted from overhead to underground will be owned by Gulf upon the completion of such conversion, including the completion of each phase of the conversion. In recognition of the foregoing agreement, each Party, intending to be legally bound, agrees not to contest or seek to limit or change the amount of the franchise fee provided for herein in any legal, regulatory, or legislative proceedings of any type whatsoever.

Section 6. As a further consideration, during the term of this Franchise or any extension thereof, and subject to the Grantor's Right to Purchase Gulf's electric Facilities in the City pursuant to Section 3 and Section 12 hereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the

Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, and (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), provided that the City shall not be considered a “third party” or an “other retail customer” for purposes of this provision. For clarity, the Parties recognize and agree that the City’s exercise of its Right to Purchase shall not constitute a violation or breach of the City’s covenant not to compete against Gulf in the business of selling electric service.

Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions that are subject to the provisions of the Federal Power Act. The Grantor retains the right to generate and distribute electric power for its own use and the right to operate emergency generating facilities owned by the Grantor for purposes of serving critical facilities (e.g., nursing homes, water and wastewater treatment plants, and similar facilities) during declared emergencies such as hurricanes or tropical storms.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person, provided that Grantee shall ensure by all means necessary that such purchases shall be made at the rates offered by the Grantee for the term of such transaction, and provided further that, if for any reason the Grantee does not honor its obligation to serve the Grantor’s facilities at the rates offered by the Grantee for the term of the transaction, such failure shall entitle Grantor to terminate the transaction and purchase electric capacity and/or electric energy from another provider. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, then the Grantor shall be permitted and entitled to enter into the proposed transaction with the other person, and all of the terms and conditions of this Franchise shall remain in effect.

<u>Section 7</u>. As part of the mutual and reciprocal exchange of consideration pursuant to this Franchise, the Parties hereby agree to the following reciprocal covenants to offer improved franchise terms to each other upon the occurrence of

certain conditions or events, such terms being generally recognized as "Favored Nations" provisions in agreements of this type. (a) If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this Franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this Franchise Agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice. Any such termination of this Franchise Agreement by the Grantee shall result in the immediate vesting of the Grantee's Right to Purchase set forth in Section 3(b) of this Franchise Agreement.

(b) Upon request, Grantee shall furnish City a copy of all other municipal franchises that it is granted, or that it has been granted, from time to time during the life of this Franchise. If the Grantee (i) enters into a franchise agreement or similar agreement with any other municipality or county in Florida that provides for a franchise fee rate greater than the maximum rate allowable under this Franchise, under the same terms and conditions as specified in Section 5 hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other municipality, provided, however, that such new franchise agreement shall include additional benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with the other municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

Section 8. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this Franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this Franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this Franchise Agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice. Any such termination of this Franchise Agreement by the Grantee shall result in the immediate vesting of the Grantee's Right to Purchase set forth in Section 3(b) of this Franchise Agreement.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this Franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal by either Party) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions, terms, or requirements of this Franchise, and the Grantee shall have six months after such final determination to cure the default before a forfeiture shall result. The Grantor, in its sole discretion, may grant such additional time to the Grantee for compliance as necessities in the case require. If any alleged breach or failure of the Grantee to comply with the provisions, terms, or requirements of this Ordinance and Franchise shall occur before the date upon which the Grantor's Right to Purchase Grantee's Facilities vests hereunder, as provided in this Franchise, then the Grantee shall have the opportunities set forth above to cure such breach or failure. If at any time during the term of this Franchise Agreement Grantee has been adjudicated to have failed to comply with the Franchise and subsequently fails to accomplish such cure within a reasonable time, the Grantor's Right to Purchase shall thereupon immediately vest in Grantor.

Section 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this Franchise, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with vehicular (including motor and bicycle) or pedestrian traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this Franchise and entitle the Grantee to withhold a portion of the payments provided for in Section 5 hereof, such portion being demonstrably commensurate with any cost or loss suffered by Grantee as a result of the Grantor's action, until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination, after the expiration or exhaustion of all rights of appeal by either Party, in the matter. The Grantor recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right as provided by law. The Grantee recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 6 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers during the term of this Franchise.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this Franchise, at the Grantor's expense, examine the records of the Grantee relating directly to the calculation of the franchise fee payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 12. Grantor hereby reserves and the Grantee hereby gives and grants to the Grantor the irrevocable right, at and after the expiration or termination of this Franchise as may be permitted or provided herein, to purchase the Facilities and Related Property on the terms and in the manner set forth in Section 3(b) hereof. Nothing contained herein shall require the Grantor to acquire the Grantee's property.

Section 13. The provisions of this Franchise Agreement are interdependent upon one another, and if any of the provisions of this Franchise Agreement are found or adjudged to be invalid, illegal, void or of no effect, the entire Franchise Agreement may be terminated by either Party, provided, however, that in the event that this Franchise Agreement is terminated by either Party pursuant to this provision of this Franchise Agreement, the Grantee expressly recognizes and agrees that the Grantor's Right to Purchase pursuant to Section 3(b) shall thereupon immediately vest in Grantor.

Section 14. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 15. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 16. Grantee shall be responsible for ensuring that it bills its Customers the correct franchise fees, and other taxes or fees. Within thirty (30) days following the Grantee's acceptance of this Franchise, Grantor shall provide an updated map of the Grantor's city limits to Grantee. If the city limits of the Grantor are altered, via annexation or some other method, then Grantor shall provide an updated map to Grantee within thirty (30) days of said alteration of the city limits. In the event that the Grantor fails to timely deliver any map as required hereunder, the Grantee shall not be liable for any mistakes in billing or collection due to such failure, and the Grantor shall, upon written request of the Grantee, promptly furnish a current map.

Section 17. As a condition precedent to the taking effect of this Ordinance and Franchise Agreement, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this Ordinance. The effective date of this Ordinance shall be the date upon which the Grantee files such acceptance.

Section 18. Effective Date: This Ordinance shall be effective on the _____ day of __________________, 2021.

PASSED on first reading this _____ day of _______________, 2021.

PASSED AND ADOPTED on second reading this _____ day of __________________, 2021.

CITY OF DESTIN, FLORIDA

By: ________________________________

ATTEST:

By: ______________________________________ (SEAL)
Clerk of the City of Destin, Florida

APPROVED AS TO FORM AND LEGALITY

____
City Attorney, City of Destin, Florida

UNDERGROUND FACILITIES CONVERSION AGREEMENT

This Underground Facilities Conversion Agreement (“Agreement”), is made and entered into this ___day of ________, 2021, by and between the City of Destin, Florida (“Applicant”), with an address of _________________and Florida Power & Light Company (doing business as Gulf Power Company, “Gulf” or “FPL”), a Florida corporation with an address of 700 Universe Boulevard, Juno Beach, FL 33408-0429. For purposes of this Agreement, Applicant and Gulf are collectively referred to as “Parties”.

WHEREAS, the Applicant has requested that Gulf and FPL convert certain overhead electric distribution facilities located within the following mutually agreed upon boundaries for phase 1 of the Applicant’s underground conversion (the “Conversion”). Description here of project (may include optional map or maps) shall include up to 3.25 miles of the Conversion. Any part of the Conversion that is greater than 3.25 miles will be covered in a separate agreement controlled by the FPL tariff.

____
____
____
____

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, hereby covenant and agree as follows:

1. **Avoided Storm Restoration Cost (“ASRC”) Eligibility Criteria.** The Applicant represents and warrants that it meets, and is capable and willing to enforce, the applicable eligibility criteria for the Conversion. The “Eligibility Criteria” are defined in Paragraph 14 of this Agreement**.**

2. **FPL Tariff.** The Applicant understands and agrees that at some time prior to, or during the pendency of the Parties’ performance of this Agreement, the Gulf Electric Tariff is planned to be replaced by the FPL Electric Tariff; however, the Parties agree that such replacement of the Gulf Electric Tariff will not affect the amount of any CIAC or ASRC, as each is hereinbelow defined, for any purpose relating to the Applicant’s costs and credits applicable to the Conversion described above.
.

3. **Contribution-in-Aid-of-Construction (CIAC).**[1] The Applicant shall pay Gulf or FPL a CIAC as required by Gulf’s Electric Tariff and Rule 25-6.115 of the Florida Administrative Code. CIAC will be calculated as follows:

CIAC =

1) The estimated cost to install the requested underground facilities;
\+ 2) The estimated cost to remove the existing overhead facilities;
\+ 3) The net book value of the existing overhead facilities;
\- 4) The estimated cost that would be incurred to install new overhead facilities, in lieu of underground, to replace the existing overhead facilities (the “Hypothetical Overhead Facilities”);
\- 5) The estimated salvage value of the existing overhead facilities to be removed;
\+ or - 6) The 30-year net present value of the estimated non-storm underground v. overhead operational costs differential;
\- 7) With respect to the Conversion described above only, the 30-year net present value of the estimated average Avoided Storm Restoration Costs (“ASRC”) as represented by FPL and Gulf to Applicant in 2020.

i. CIAC (excluding ASRC) $___________________
ii. Less ASRC $ ___________________
iii. CIAC Due $ ___________________

In the event the actual cost of the Conversion (excluding ASRC) exceeds the estimate, the CIAC (excluding ASRC) shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b)

---

[1] In the calculation of CIAC, the estimated cost that would be incurred to install new overhead facilities, in lieu of underground facilities, is the cost of hypothetical overhead facilities built to Extreme Wind Loading standards

10% of the CIAC (excluding ASRC) identified above. The ASRC shall also be adjusted accordingly and the Applicant shall pay Gulf the resulting difference in the amount of the CIAC Due.

4. **Applicant-Installed Facilities.** The Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to Gulf, construct and install all or a portion of the Underground Facilities. Such work must meet Gulf's construction standards and Gulf or FPL will own and maintain the completed facilities. The Applicant agrees to rectify any deficiencies, found by Gulf or FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.

5. **Compliance with Tariff.** The Applicant agrees to comply with and abide by the requirements, terms, and conditions of Gulf's Electric Tariff or FPL's Electric Tariff, to the extent applicable and to the extent that such tariff provisions are consistent with the specific terms of this Agreement..

6. **Timing of Conversion.** Upon compliance by the Applicant with the requirements, terms, and conditions of Gulf's Electric Tariff or FPL's Electric Tariff, to the extent applicable, this Agreement and any other applicable agreements, Gulf or FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof

7. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between Gulf or FPL and the Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Gulf Electric Tariff, or to the extent applicable the FPL Electric Tariff, this Agreement and the Gulf Electric Tariff shall control.

8. **Term.** This Agreement shall remain in effect for as long as Gulf, FPL, or any successor or assign of Gulf or FPL owns or operates the Underground Facilities.

9. **ASRC Repayment.** If the Applicant does not satisfy the relevant eligibility criteria, the Applicant shall repay the ASRC within 30 days of written notice from Gulf, FPL, or any successor or assign of Gulf or FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Applicant elects to have electric service within the Conversion Area supplied by a provider other than Gulf, FPL, or any successor or assign of Gulf or FPL, the Applicant shall repay Gulf, FPL, or any successor or assign of Gulf or FPL a pro-rata share of the ASRC. The pro-rata share (which shall reflect partial years) shall be determined as follows:

   ASRC [(30 – years since the Underground Facilities completion date) / 30]

10. **Termination Prior to the Conversion Completion.** Failure by the Applicant to comply with any of the requirements, terms or conditions of this Agreement or Gulf's Electric Tariff, and at such time as Gulf's Electric Tariff is replaced by FPL's Electric Tariff, then from that time forward, failure by the Applicant to comply with the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff, shall result in termination of this Agreement. The Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Applicant will be refunded to the Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by Gulf or FPL in performing under the Agreement up to the date of termination.

11. **Assignment.** The Applicant shall not assign this Agreement without the written consent of Gulf or FPL.

12. **Adoption and Recording.** This Agreement shall be adopted by the Applicant and maintained in the official records of the Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Applicant and Gulf, the terms of this Agreement shall control.

14. **Applicability.** This subpart applies to requests for underground facilities addressing the conversion of existing overhead facilities. In order for Gulf (or FPL) to take action pursuant to a request for conversion:
    a. the conversion area must be at least two contiguous city blocks or 1,000 feet in length; and
    b. all electric services to the real property on both sides of the existing overhead primary lines must be

part of the conversion.

IN WITNESS WHEREOF, FPL and the Applicant have executed this Agreement on the date first set forth above.

APPLICANT	**Gulf and FPL**
Signed ________________________	Signed ________________________
Name _________________________	Name _________________________
Title __________________________	Title __________________________

Signed ________________________

Name _________________________

Title __________________________

Approved as to the Terms and Conditions (if required by Applicant)

Signed ________________________

Name _________________________

Title __________________________

Approved as to Form and Legal Sufficiency (if required by Applicant)

Signed ________________________

Name _________________________

Title __________________________